Summary

Regulators and advertisers have long challenged implied comparative claims when these have falsely suggested superiority. Still, advertisers have continued to develop creative presentations to best position their brands against the competition. Whether superiority claims are challenged at NAD or in the Lanham Act courts, the general complaint refers to the lack of substantiation to support meanings indirectly conveyed to consumers.

The following chapter will describe legal challenges to a specific type of implied claim that has been increasingly used in advertisements. As their name indicates, combined comparatives refer to a combination of claims of different directions (parity or superiority) or specificity (puffery or specific attribute). The claims can also be made explicitly or can be implied. The problem with such claims is that often one of the claims is unsubstantiated, but the juxtaposition with other claims conveys to consumers unqualified substantiation for all claims in the ad. While advertisers have begun to challenge the pairing of claims that falsely suggest comparative superiority, there has been limited research addressing the manner in which consumers process such claims. Chapter six will address this issue.